

Docket: 2003-2579(IT)APP

BETWEEN:

NORMAND PAQUET,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Application heard on October 10, 2003, at Québec City, Quebec.

Before: The Honourable Judge Paul Bédard

Appearances:

Agent for the Applicant: Christian Boivin

Counsel for the Respondent: Marie-Aimée Cantin

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### ORDER

Upon application for an Order extending the time within which an appeal from the assessments under the *Income Tax Act* for the taxation years 1998, 1999 and 2000 can be brought;

And upon hearing what was alleged by the parties;

The application is allowed and the time within which an appeal can be brought is extended to the date of this Order, the Notice of Appeal accompanying the application being considered valid on the date of this Order, if and when the Applicant requests that this appeal be governed by the informal procedure or the

general procedure and that the appropriate filing fee is paid to the Court Registry by February 24, 2004.

Signed at Ottawa, Canada, this 12<sup>th</sup> day of January 2004.

"Paul Bédard"

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Bédard, J.

Translation certified true  
on this 26<sup>th</sup> day of April 2004.

Sharon Moren, Translator

Citation: 2003TCC841  
Date: 20040112  
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### **REASONS FOR ORDER**

#### **Bédard, J.**

[1] This is an application made under subsection 167(5) of the *Income Tax Act* (the "Act") for an order to extend the time in which the Applicant can appeal the decision by the Minister of National Revenue (the "Minister"). The Court must determine whether there are grounds for the Applicant's application for extension of the time to bring an appeal for the 1998, 1999 and 2000 taxation years.

[2] The facts in evidence are:

- On October 9, 2001, the Minister sent the Applicant Notices of Reassessment for the 1998, 1999 and 2000 taxation years. On approximately December 12, 2001, the Applicant served on the Minister through Annie Poulin, an accounting technician, his objection to the Notices of Reassessment. In reply to these notices of objection, the Minister forwarded Notices of Reassessment dated April 25, 2002.

- Annie Poulin, the Applicant's agent at the time, undertook negotiations with the Minister, which led to an agreement signed by the Applicant and the Minister in June 2002. Nicole Turcotte, auditor for the Canada Customs and Revenue Agency, testified to the effect that she had negotiated with Ms. Poulin.

Ms. Turcotte stated that she spoke with the Applicant during a telephone conversation but that she always negotiated with Ms. Poulin.

- It is important to specify that the Applicant considers himself illiterate and having little education. That is why he retained Ms. Poulin's services to look after his file. The Applicant had blind faith in Ms. Poulin. The latter allegedly informed the Applicant that after signing the June 2002 agreement, he had to pay \$300 per month for six months and then the file would be closed.

- In November 2002, the Applicant received a statement of account from the Minister indicating that the Applicant owed a balance of \$12,000. He questioned Ms. Poulin about this statement of account and a disagreement allegedly occurred between the Applicant and Ms. Poulin. As a result, Ms. Poulin withdrew from the file in November 2002.

- Consequently, the Applicant took numerous steps to find a new accountant to handle his file. The same month, November 2002, the Applicant went to an accounting office where he met an accounting technician. He was not able to meet with a certified accountant until a week later. The accountant made an appointment with him for 15 days later. During this appointment, the accountant told the Applicant that he could not look after his file. The Applicant was accordingly sent to another accountant. Waiting until after the holidays, he met this accountant in January 2003. The Applicant asked at that time if he could appeal the assessments. He was told he could. His file was given to another accountant in the same office. It was not until two weeks later that he met with this accountant. The accountant told the Applicant that he needed copies of certain contracts for the sale of some horses. As these horses had been sold to the United States, a two-month period passed before the Applicant was able to gather all the necessary copies. He still did not have the name of the American buyer. The accountant recommended that the Applicant make up a name, which he refused to do. It was important to the Applicant to have truthful records to be able to present them to the Court. In May 2003, the accountant told the Applicant that he could no longer do anything for him. Finally, the Applicant retained the services of Christian Boivin, a tax expert, in July 2003. This same Mr. Boivin acted as the Applicant's agent during the hearing of this application. Mr. Boivin observed that the time for an appeal from the assessments by the Minister had run out and that it was necessary to immediately submit an application for an extension. The application was submitted on July 9, 2003, 350 days after the deadline for bringing an appeal, which was July 24, 2002.

[3] Is the Applicant in compliance with subsection 167(5) of the Act and is he entitled to an extension of the time for lodging his Notice of Appeal? Subsection 167(5) of the Act reads:

**When order to be made.** No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that:

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a bona fide intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

[4] The time for bringing an appeal under section 169 of the Act expired on July 24, 2002. The Applicant submitted an application for an extension on July 9, 2003. The application was thus submitted in the year following the expiration of the period mentioned under section 169 of the Act for bringing an appeal. As a result, the Applicant complied with paragraph 167(5)(a) of the Act.

[5] Before allowing the application for an extension of the time to appeal, the Court must be satisfied that, in the time limit for bringing an appeal (in the present case, the period expired on July 24, 2002), the Applicant had been unable to act or to instruct someone else to act on his behalf, or he truly intended to bring an appeal. These two conditions appearing in subparagraph 167(5)(b) of the Act are disjunctive.

[6] In the case at bar, the Court cannot conclude that the Applicant truly intended to lodge an appeal between April 25, 2002 and July 24, 2002. The

Applicant signed an agreement with the Minister in June 2002 and it was not until November of the same year that he received a statement of account from the Minister indicating that he owed a balance of \$12,000. It is upon receipt of the statement of account that the Applicant really intended to appeal. Before that time, the Applicant believed that the dispute had been settled.

[7] As for the period from April 25, 2002 to June 2002, that is, before the signing of the agreement, the Applicant had no real intention of appealing the Minister's decision as he attempted, to settle the dispute through Ms. Poulin. Beaubier J. of this Court, in *Steve Bata v. Canada*, [1998] T.C.J. No. 803 found that the desire to reach an out-of-court settlement cannot be interpreted as a true intention to lodge an appeal. Here are the comments of Beaubier J. at subsections 7 and 8:

The appellant testified that he thought that he could get Mr. Berta to sign the acknowledgments so that the cost of a lawyer in an appeal wouldn't be necessary. On the evidence, the appellant has not convinced the Court that the appellant always had a bona fide intention to appeal pursuant to (5)(b)(i)(B). Rather, he had an intention to settle the matter so as to avoid the cost of an appeal.

The appellant testified that he always wanted to appeal, but his actions did not confirm his testimony. The appellant did not suffer from any circumstances which prevented him from making this application at any time before he did. He was not away from Canada or Regina. He did not suffer from a major illness or disability. His job at the Hungarian Club was for 365 days per year but, even so, he operated a building cleaning business on the side. On the evidence, he tried to get Mr. Berta to sign exhibits A-1 and A-2, so that he could make a deal with Revenue Canada.

[8] Despite the absence of intention to appeal prior to November 2002, the Court is of the opinion that the Applicant was unable to act or to instruct someone to act on his behalf during the time granted for lodging an appeal. As mentioned above, the Applicant did not really intend to lodge an appeal between April 25, 2002 and June 2002, as he attempted to make some sort of settlement. The Applicant did not obtain the results that had been set out for him before he signed the agreement. The Court believes the Applicant when he says he agreed to sign the agreement on the basis of only having to pay \$300 per month for six months, and no more. Let us remember that the Applicant is a person with little education and who is, consequently, at the mercy of the people around him. If the Applicant had understood that the agreement did not give the expected results, the

Court believes that he would not have entered into this agreement. There was thus error regarding the benefit on the Applicant's part, which vitiates his consent to the agreement. If he had not signed the agreement in June 2002, the Applicant would have had more than a month to lodge an appeal. It was impossible for the Applicant to act or instruct another to act on his behalf by virtue of the agreement entered into in June 2002. It was not until November 2002, when he received the statement of account, that this impossibility ceased.

[9] The Applicant's situation is similar to the situation in *Abboud v. Canada*, [1996] T.C.J. No. 956. In *Abboud*, the Applicant found it difficult to express himself in either French or English. Mr. Abboud did business with an accountant. Due to his communication problems, Mr. Abboud had to blindly put himself in the hands of his accountant. In his judgment, Tremblay, J. states:

[TRANSLATION]

Despite the Applicant's difficulty in expressing himself in either of the country's two official languages, his testimony confirmed the facts described in the application for an extension of the October 6, 1995, deadline...

The corporation "Les Investissements Papillon" was incorporated in 1985. The Applicant possessed 50% of the shares. This company's activity consisted in operating a convenience store.

For six years, the applicant had an accountant who in all likelihood had served him well. He trusted him. Therefore, following the issue of notices of assessments and multiple requests for information by Revenue Canada by telephone and letter alike, the Applicant transferred his records to him. The accountant told him: "Don't worry, I'm taking care of it."

The Respondent's letters dated May 25, 1994; July 13, 1994; December 12, 1994; May 16, 1995, and June 12, 1995, have all been filed as exhibits I-1, I-2, I-3 and I-4.

The receipt of a letter dated April 26, 1995, from Revenue Canada made the applicant decide to seek the services of a law firm, Carrière, Dame, Paquet, Pinard. This firm sent a cease and desist letter to the applicant's accountant. He was never able to be reached and thus, none of the applicant's records in the accountant's possession could be obtained.

...

The Court is satisfied with the evidence presented, namely that the applicant, in all of the circumstances, was unable to act or instruct someone to act on his behalf. Moreover, he truly intended to object to the assessment. He made every sacrifice to pay all his debts.  
[Emphasis added]

[10] For these reasons, the Court finds that the Applicant meets the criteria under paragraph 167(5)(b)(i) of the Act in that he could not act or instruct someone to act on his behalf during the period granted for lodging an appeal.

[11] In the circumstances it is fair and just to allow the Application. The Applicant, knowing his limitations due to his lack of education, did everything he could to obtain the necessary help when he became aware of the situation. He knocked on a number of doors unsuccessfully. The Applicant's delay is not attributable to his negligence. To the contrary, the Applicant has demonstrated perseverance. It is therefore fair and just to allow his application. The condition in subparagraph 167(5)(b)(ii) of the Act is thus met.

[12] Was the application submitted as soon as circumstances permitted as required in subparagraph 167(5)(b)(iii)? As soon as Mr. Boivin was instructed to take care of the Applicant in early July 2003, he advised him to submit an application for an extension of the deadline. The application was submitted on July 9, 2003. As it was impossible for the Applicant to act or instruct someone to act on his behalf before November 2002 and because he had not been able to find a competent agent before July 2003, it is reasonable to think that the application was submitted as soon as circumstances permitted. The complexity of the matter and the Applicant's lack of education are such that the Applicant could not have acted alone.

[13] Finally, are there reasonable grounds for the appeal? It is not up to this Court to determine the appeal's chances for success. It is enough that the Applicant has reasonable grounds for an appeal for the appeal to be justified under subparagraph 167(5)(b)(iv) of the Act. Although the Applicant elaborated little on the reason for his appeal, the Court agrees that there are reasonable grounds for the appeal.

[14] The Applicant therefore meets the conditions set forth in subsection 167(5) of the Act. For these reasons, he is entitled to apply for an extension of the time for an appeal for the years 1998, 1999 and 2000.

Signed at Ottawa, this 12<sup>th</sup> day of January 2004.

"Paul Bédard"

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Bédard, J.

Translation certified true  
on this 26<sup>th</sup> day of April 2004.

Sharon Moren, Translator

